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LEGISLATIVE ACTION

Senate . House

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The Committee on Rules (Richter) recommended the following:

1 **Senate Amendment(with title amendment)**

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3 Delete everything after the enacting clause

4 and insert:

5 Section 1. Paragraph (b) of subsection (2) of section
6 468.436, Florida Statutes, is amended to read:

7 468.436 Disciplinary proceedings.—

8 (2) The following acts constitute grounds for which the
9 disciplinary actions in subsection (4) may be taken:

10 (b)1. Violation of any provision of this part.

11 2. Violation of any lawful order or rule rendered or
12 adopted by the department or the council.

13 3. Being convicted of or pleading nolo contendere to a
14 felony in any court in the United States.

15 4. Obtaining a license or certification or any other order,
16 ruling, or authorization by means of fraud, misrepresentation,
17 or concealment of material facts.

18 5. Committing acts of gross misconduct or gross negligence
19 in connection with the profession.

20 6. Contracting, on behalf of an association, with any
21 entity in which the licensee has a financial interest that is
22 not disclosed.

23 7. Violating any provision of chapters 718, 719, or 720
24 during the course of performing community association management
25 services pursuant to a contract with a community association as
26 defined in s.468.431(1).

27 Section 2. Subsection (5) and paragraph (d) of subsection
28 (6) of section 720.303, Florida Statutes, are amended, and
29 subsection (13) is added to that section, to read:

30 720.303 Association powers and duties; meetings of board;
31 official records; budgets; financial reporting; association
32 funds; recalls.—

33 (5) INSPECTION AND COPYING OF RECORDS.—The official records
34 shall be maintained within the state for at least 7 years and

35 shall be made available to a parcel owner for inspection or
36 photocopying within 45 miles of the community or within the
37 county in which the association is located within 10 business
38 days after receipt by the board or its designee of a written
39 request must be open to inspection and available for
40 photocopying by members or their authorized agents at reasonable
41 times and places within 10 business days after receipt of a
42 written request for access. This subsection may be complied with
43 by having a copy of the official records available for
44 inspection or copying in the community or, at the option of the
45 association, by making the records available to a parcel owner
46 electronically via the Internet or by allowing the records to be
47 viewed in electronic format on a computer screen and printed
48 upon request. If the association has a photocopy machine
49 available where the records are maintained, it must provide
50 parcel owners with copies on request during the inspection if
51 the entire request is limited to no more than 25 pages. An
52 association shall allow a member or his or her authorized
53 representative to use a portable device, including a smartphone,
54 tablet, portable scanner, or any other technology capable of
55 scanning or taking photographs, to make an electronic copy of
56 the official records in lieu of providing the member or his or
57 her authorized representative with a copy of such records. The
58 association may not charge a fee to a member or his or her
59 authorized representative for such use of a portable device.

60 (a) The failure of an association to provide access to the
61 records within 10 business days after receipt of a written
62 request submitted by certified mail, return receipt requested,
63 creates a rebuttable presumption that the association willfully
64 failed to comply with this subsection.

65 (b) A member who is denied access to official records is
66 entitled to the actual damages or minimum damages for the
67 association's willful failure to comply with this subsection.
68 The minimum damages are to be \$50 per calendar day up to 10
69 days, the calculation to begin on the 11th business day after
70 receipt of the written request.

71 (c) The association may adopt reasonable written rules
72 governing the frequency, time, location, notice, records to be
73 inspected, and manner of inspections, but may not require a
74 parcel owner to demonstrate any proper purpose for the
75 inspection, state any reason for the inspection, or limit a
76 parcel owner's right to inspect records to less than one 8-hour
77 business day per month. The association may impose fees to cover
78 the costs of providing copies of the official records,
79 including, without limitation, the costs of copying and the
80 costs required for personnel to retrieve and copy the records if
81 the time spent retrieving and copying the records exceeds one
82 half hour and if the personnel costs do not exceed \$20 per hour.
83 No personnel costs may be charged for records requests that

84 result in 25 or fewer pages. The association may charge up to 25
85 50 cents per page for copies made on the association's
86 photocopier. If the association does not have a photocopy
87 machine available where the records are kept, or if the records
88 requested to be copied exceed 25 pages in length, the
89 association may have copies made by an outside duplicating
90 service vendor or association management company personnel and
91 may charge the actual cost of copying, as supported by the
92 vendor invoice including any reasonable costs involving
93 personnel fees and charges at an hourly rate for vendor or
94 employee time to cover administrative costs to the vendor or
95 association. The association shall maintain an adequate number
96 of copies of the recorded governing documents, to ensure their
97 availability to members and prospective members. Notwithstanding
98 this paragraph, the following records are not accessible to
99 members or parcel owners:

100 1. Any record protected by the lawyer-client privilege as
101 described in s. 90.502 and any record protected by the work
102 product privilege, including, but not limited to, a record
103 prepared by an association attorney or prepared at the
104 attorney's express direction which reflects a mental impression,
105 conclusion, litigation strategy, or legal theory of the attorney
106 or the association and which was prepared exclusively for civil
107 or criminal litigation or for adversarial administrative
108 proceedings or which was prepared in anticipation of such
109 litigation or proceedings until the conclusion of the litigation
110 or proceedings.

111 2. Information obtained by an association in connection
112 with the approval of the lease, sale, or other transfer of a
113 parcel.

114 3. Personnel records of the association's employees,
115 including, but not limited to, disciplinary, payroll, health,
116 and insurance records. For purposes of this subparagraph, the
117 term "personnel records" does not include written employment
118 agreements with an association employee or budgetary or
119 financial records that indicate the compensation paid to an
120 association employee.

121 4. Medical records of parcel owners or community residents.

122 5. Social security numbers, driver's license numbers,
123 credit card numbers, electronic mailing addresses, telephone
124 numbers, facsimile numbers, emergency contact information, any
125 addresses for a parcel owner other than as provided for
126 association notice requirements, and other personal identifying
127 information of any person, excluding the person's name, parcel
128 designation, mailing address, and property address. However, an
129 owner may consent in writing to the disclosure of protected
130 information described in this subparagraph. The association is
131 not liable for the disclosure of information that is protected
132 under this subparagraph if the information is included in an

133 official record of the association and is voluntarily provided
134 by an owner and not requested by the association.

135 6. Any electronic security measure that is used by the
136 association to safeguard data, including passwords.

137 7. The software and operating system used by the
138 association which allows the manipulation of data, even if the
139 owner owns a copy of the same software used by the association.
140 The data is part of the official records of the association.

141 (d) The association or its authorized agent is not required
142 to provide a prospective purchaser or lienholder with
143 information about the residential subdivision or the association
144 other than information or documents required by this chapter to
145 be made available or disclosed. The association or its
146 authorized agent may charge a reasonable fee to the prospective
147 purchaser or lienholder or the current parcel owner or member
148 for providing good faith responses to requests for information
149 by or on behalf of a prospective purchaser or lienholder, other
150 than that required by law, if the fee does not exceed \$150 plus
151 the reasonable cost of photocopying and any attorney's fees
152 incurred by the association in connection with the response.

153 (6) BUDGETS.—

154 (d) An association is deemed to have provided for reserve
155 accounts if reserve accounts have been initially established by
156 the developer or if the membership of the association
157 affirmatively elects to provide for reserves. If reserve
158 accounts are established by the developer, the budget must
159 designate the components for which the reserve accounts may be
160 used. If reserve accounts are not initially provided by the
161 developer, the membership of the association may elect to do so
162 upon the affirmative approval of a majority of the total voting
163 interests of the association. Such approval may be obtained by
164 vote of the members at a duly called meeting of the membership
165 or by the written consent of a majority of the total voting
166 interests of the association. The approval action of the
167 membership must state that reserve accounts shall be provided
168 for in the budget and must designate the components for which
169 the reserve accounts are to be established. Upon approval by the
170 membership, the board of directors shall include the required
171 reserve accounts in the budget in the next fiscal year following
172 the approval and each year thereafter. Once established as
173 provided in this subsection, the reserve accounts must be funded
174 or maintained or have their funding waived in the manner
175 provided in paragraph (f).

176 (13) REPORTING REQUIREMENT.—The community association
177 manager or management firm, or the association when there is no
178 community association manager or management firm, shall report
179 to the division by November 22, 2013, in a manner and form
180 prescribed by the division.

181 (a) The report shall include the association's:

182 1. Legal name.
183 2. Federal employer identification number.
184 3. Mailing and physical addresses.
185 4. Total number of parcels.
186 5. Total amount of revenues and expenses from the
187 association's annual budget.
188 (b) For associations in which control of the association
189 has not been transitioned to nondeveloper members, as set forth
190 in s.720.307, the report shall also include the developer's:
191 1. Legal name.
192 2. Mailing address.
193 3. Total number of parcels owned on the date of reporting.
194 (c) The reporting requirement provided in this subsection
195 shall be a continuing obligation on each association until the
196 required information is reported to the division.
197 (d) By October 1, 2013, the department shall establish and
198 implement a registration system through an Internet website that
199 provides for the reporting requirements of paragraphs (a) and
200 (b).
201 (e) On or before December 1, 2013, and annually thereafter
202 by December 1, the department shall submit a report to the
203 Governor, the President of the Senate, and the Speaker of the
204 House of Representatives providing the homeowner association
205 data reported pursuant to this subsection.
206 (f) The division may adopt rules pursuant to ss.120.536(1)
207 and 120.54 to implement the provisions of this subsection.
208 (g) This subsection shall expire on July 1, 2016, unless
209 reenacted by the Legislature.
210 Section 3. Section 720.3033, Florida Statutes, is created
211 to read:
212 720.3033 Officers and directors.—
213 (1)(a) Within 90 days after being elected or appointed to
214 the board, each director shall certify in writing to the
215 secretary of the association that he or she has read the
216 association's declaration of covenants, articles of
217 incorporation, bylaws, and current written rules and policies;
218 that he or she will work to uphold such documents and policies
219 to the best of his or her ability; and that he or she will
220 faithfully discharge his or her fiduciary responsibility to the
221 association's members. Within 90 days after being elected or
222 appointed to the board, in lieu of this written certification,
223 the newly elected or appointed director may submit a certificate
224 of having satisfactorily completed the educational curriculum
225 administered by a division-approved education provider within 1
226 year before or 90 days after the date of election or
227 appointment.
228 (b) The written certification or educational certificate is
229 valid for the uninterrupted tenure of the director on the board.
230 A director who does not timely file the written certification or

231 educational certificate shall be suspended from the board until
232 he or she complies with the requirement. The board may
233 temporarily fill the vacancy during the period of suspension.

234 (c) The association shall retain each director's written
235 certification or educational certificate for inspection by the
236 members for 5 years after the director's election. However, the
237 failure to have the written certification or educational
238 certificate on file does not affect the validity of any board
239 action.

240 (2) If the association enters into a contract or other
241 transaction with any of its directors or a corporation, firm,
242 association that is not an affiliated homeowners' association,
243 or other entity in which an association director is also a
244 director or officer or is financially interested, the board
245 must:

246 (a) Comply with the requirements of s.617.0832.

247 (b) Enter the disclosures required by s.617.0832 into the
248 written minutes of the meeting.

249 (c) Approve the contract or other transaction by an
250 affirmative vote of two-thirds of the directors present.

251 (d) At the next regular or special meeting of the members,
252 disclose the existence of the contract or other transaction to
253 the members. Upon motion of any member, the contract or
254 transaction shall be brought up for a vote and may be canceled
255 by a majority vote of the members present. If the members cancel
256 the contract, the association is only liable for the reasonable
257 value of goods and services provided up to the time of
258 cancellation and is not liable for any termination fee,
259 liquidated damages, or other penalty for such cancellation.

260 (3) An officer, director, or manager may not solicit, offer
261 to accept, or accept any good or service of value for which
262 consideration has not been provided for his or her benefit or
263 for the benefit of a member of his or her immediate family from
264 any person providing or proposing to provide goods or services
265 to the association. If the board finds that an officer or
266 director has violated this subsection, the board shall
267 immediately remove from office the officer or director. The
268 vacancy shall be filled according to law until the end of the
269 period of the end of the director's term of office. However, an
270 officer, director, or manager may accept food to be consumed at
271 a business meeting with a value of less than \$25 per individual
272 or a service or good received in connection with trade fairs or
273 education programs.

274 (4) A director or officer charged by information or
275 indictment with a felony theft or embezzlement offense involving
276 the association's funds or property is removed from office. The
277 board shall fill the vacancy according to general law until the
278 end of the period of the suspension or the end of the director's
279 term of office, whichever occurs first. However, if the charges

280 are resolved without a finding of guilt or without acceptance of
281 a plea of guilty or nolo contendere, the director or officer
282 shall be reinstated for any remainder of his or her term of
283 office. A member who has such criminal charges pending may not
284 be appointed or elected to a position as a director or officer.

285 (5) All associations shall maintain insurance or a fidelity
286 bond for all persons who control or disburse funds of the
287 association. The insurance policy or fidelity bond must cover
288 the maximum funds that will be in the custody of the association
289 or its management agent at any one time. As used in this
290 subsection, the term “persons who control or disburse funds of
291 the association” includes, but is not limited to, persons
292 authorized to sign checks on behalf of the association, and the
293 president, secretary, and treasurer of the association. The
294 association shall bear the cost of any insurance or bond.

295 Section 4. Paragraph (a) of subsection (9) of section
296 720.306, Florida Statutes, is amended to read:

297 720.306 Meetings of members; voting and election
298 procedures; amendments.—

299 (9)(a) ELECTIONS AND BOARD VACANCIES.—Elections of
300 directors must be conducted in accordance with the procedures
301 set forth in the governing documents of the association. All
302 members of the association are eligible to serve on the board of
303 directors, and a member may nominate himself or herself as a
304 candidate for the board at a meeting where the election is to be
305 held; ~~provided, however, that~~ if the election process allows
306 ~~candidates to be nominated in advance of the meeting voting by~~
307 ~~absentee ballot, in advance of the balloting, the association is~~
308 ~~not required to allow nominations at the meeting. An election is~~
309 ~~not required unless more candidates are nominated than vacancies~~
310 ~~exist.~~ Except as otherwise provided in the governing documents,
311 boards of directors must be elected by a plurality of the votes
312 cast by eligible voters.

313 Section 5. Subsection (1) of section 720.307, Florida
314 Statutes, is amended, present subsections (2) through (4) are
315 renumbered as subsections (3) through (5), respectively, and new
316 subsection (2) is added to that section, to read:

317 720.307 Transition of association control in a community.
318 With respect to homeowners’ associations:

319 (1) Members other than the developer are entitled to elect
320 at least a majority of the members of the board of directors of
321 the homeowners’ association when the earlier of the following
322 events occurs:

323 (a) Three months after 90 percent of the parcels in all
324 phases of the community that will ultimately be operated by the
325 homeowners’ association have been conveyed to members; or

326 (b) Such other percentage of the parcels has been conveyed
327 to members, or such other date or event has occurred, as is set
328 forth in the governing documents in order to comply with the

329 requirements of any governmentally chartered entity with regard
330 to the mortgage financing of parcels;

331 (c) Upon the developer abandoning or deserting its
332 responsibility to maintain and complete the amenities or
333 infrastructure as disclosed in the governing documents. There is
334 a rebuttable presumption that the developer has abandoned and
335 deserted the property if the developer has unpaid assessments or
336 guaranteed amounts under s.720.308 for a period of more than 2
337 years;

338 (d) Upon the developer filing a petition seeking protection
339 under chapter 7 of the federal Bankruptcy Code;

340 (e) Upon the developer losing title to the property through
341 a foreclosure, or the transfer of a deed in lieu of foreclosure,
342 unless the successor owner has accepted an assignment of
343 developer rights and responsibilities first arising after the
344 date of such assignment; or

345 (f) Upon a receiver for the developer being appointed by a
346 circuit court and not being discharged within 30 days after such
347 appointment, unless the court determines within 30 days after
348 such appointment that transfer of control would be detrimental
349 to the association or its members.

350

351 For purposes of this section, the term “members other than
352 the developer” shall not include builders, contractors, or
353 others who purchase a parcel for the purpose of constructing
354 improvements thereon for resale.

355 (2) Members other than the developer are entitled to elect
356 at least one member of the board of directors of the homeowners’
357 association if 25 percent of the parcels in all phases of the
358 community which will ultimately be operated by the association
359 have been conveyed to members.

360 Section 6. Subsection (5) is added to section 720.3075,
361 Florida Statutes, to read:

362 720.3075 Prohibited clauses in association documents.—

363 (5) It is declared that the public policy of this state is
364 that prior to transition of homeowners’ association control in a
365 community from the developer to the nondeveloper members, as set
366 forth in s.720.307, a developer is prohibited from unilaterally
367 making amendments to the governing documents which bind members
368 of the association, which would unreasonably modify the original
369 plan of development, radically change the community scheme, or
370 prejudice the rights of the existing nondeveloper members to use
371 and enjoy the benefits of the common property. An amendment to
372 thegoverningdocuments shall not be deemed to unreasonably
373 modify the original plan of development, radically change the
374 community scheme, or prejudice the rights of the existing
375 nondeveloper members to use and enjoy the benefits of the common
376 property unless the developer’s authority to make such
377 amendments was not reserved in the original governing documents,

378 and the amendment is arbitrary, capricious or in bad faith,
379 destroys the general plan of development, or materially shifts
380 economic burdens from the developer to the existing nondeveloper
381 members.

382 Section 7. Paragraph (b) of subsection (2) of section
383 720.3085, Florida Statutes, is amended to read:

384 720.3085 Payment for assessments; lien claims.—

385 (2)

386 (b) A parcel owner is jointly and severally liable with the
387 previous parcel owner for all unpaid assessments that came due
388 up to the time of transfer of title. This liability is without
389 prejudice to any right the present parcel owner may have to
390 recover any amounts paid by the present owner from the previous
391 owner. For the purposes of this subsection, the term “previous
392 owner” shall not include an association that acquires title to a
393 delinquent property through foreclosure or by deed in lieu of
394 foreclosure. The present parcel owner’s liability for unpaid
395 assessments is limited to any unpaid assessments that accrued
396 before the association acquired title to the delinquent property
397 through foreclosure or by deed in lieu of foreclosure.

398 Section 8. This act shall take effect July 1, 2013.

399

400

401 ===== T I T L E A M E N D M E N T =====

402 And the title is amended as follows:

403 Delete everything before the enacting clause

404 and insert:

405 A bill to be entitled

406 An act relating to homeowners’ associations; amending
407 s. 468.436, F.S.; providing grounds for disciplinary
408 actions against community association managers;
409 amending s. 720.303, F.S.; requiring official records
410 to be maintained within a specified distance of the
411 association for a specified time; authorizing
412 associations to maintain such records online;
413 requiring associations to allow a member to use a
414 portable device to make an electronic copy of the
415 official records and prohibiting associations from
416 charging a fee for such an electronic copy; removing
417 provisions allowing the association to charge fees for
418 personnel costs related to records access; requiring
419 budgets to designate permissible uses of reserve
420 accounts; requiring a community association manager,
421 or the association in the absence of a community
422 association manager, to report certain information to
423 the Division of Florida Condominiums, Timeshares, and
424 Mobile Homes; providing an expiration date for the
425 reporting requirements; creating s. 720.3033, F.S.;
426 requiring association directors to file with the

427 association secretary written certification that they
428 have read certain association documents, will uphold
429 the documents, and will uphold their fiduciary
430 responsibility to the members; providing for an
431 educational certificate in lieu of written
432 certification; providing that such certification is
433 valid while the director is on the board; providing
434 penalties for failure to file such certification;
435 requiring the association secretary to retain such
436 certification for 5 years; requiring the board to
437 follow specified procedures relating to contracts or
438 transactions between the association and certain
439 entities; providing for disclosure of the contract or
440 transaction to members; providing for the cancellation
441 of such contract or transaction under certain
442 circumstances; prohibiting any association officer,
443 director, or manager from soliciting or receiving
444 certain personal benefits from any person providing or
445 offering to provide goods or services to the
446 association and providing for removal for knowingly
447 taking such action; providing an exception; providing
448 for the removal of any director or officer charged
449 with a felony theft or embezzlement offense involving
450 association funds or property; providing for the
451 reinstatement of such person under certain
452 circumstances; prohibiting a member with pending
453 criminal charges from certain positions; requiring the
454 association to maintain insurance or a bond to cover
455 funds that will be in the custody of the association
456 or its management agent; providing a definition;
457 amending s. 720.306, F.S.; revising procedures for the
458 election of directors; amending s. 720.307, F.S.;
459 providing additional circumstances for authorizing
460 members to elect a majority of association board
461 members; providing circumstances under which members
462 other than the developer are authorized to elect a
463 specified number of members to the board of directors;
464 amending s. 720.3075, F.S.; providing public policy
465 regarding prohibited clauses in association documents;
466 providing prohibited clauses in association documents;
467 amending s. 720.3085, F.S.; defining the term
468 “previous owner” to exclude certain associations from
469 provisions relating to the liability of previous
470 owners of parcels for unpaid assessments; limiting a
471 present owner’s liability for certain assessments;
472 providing an effective date.